

THE QUESTION NOW ARISES

WHO IS AT THE HEAD OF THE PUBLIC WORKS

THE QUESTION RAISED BEFORE THE COMMISSION TO ASSESS DAMAGES IN WAIKIKI ROAD WIDENING CASE.

Who is Superintendent of Public Works? Is it James H. Boyd or Henry E. Cooper?

The question was formally raised and the machinery set in motion for a judicial determination, this morning before the commission appointed to assess damages and betterments for the property affected by the widening of the Waikiki road from King street to Kaplania park.

The commission consists of Willard E. Brown, Jacob F. Brown and F. J. Testa. It met at the office of J. F. Brown the chairman at 10 o'clock this morning. Henry E. Cooper was there representing the government. Ex-Judge Stanley and George A. Davis appeared to represent W. H. Cornwell, A. Ahrens and J. F. Bowler the owners of a tract of about twenty acres of land abutting on Waikiki road, a part of which is required for the widening. Bruce Cartwright appeared as the representative of the Queen Emma estate. These are the principal property owners who have not yet settled with the government.

The commissions under which each of the commissioners is acting is as follows:

"Territory of Hawaii, Department of Public Works: Be it known, that in order carefully and scrupulously to discharge the duties imposed on me by Section 75 of an Act to Provide a Government for the Territory of Hawaii, and by the laws of Hawaii, I have constituted and appointed, and by virtue of the authority in me vested, I do hereby constitute and appoint W. E. Brown, J. F. Brown and F. J. Testa a member of a Board of Commissioners to assess the amount of damages to be sustained by such claimants as have failed to agree with the government in the compromise of their claims and to assess betterments in the matter of the widening of the Waikiki road from junction of King and Waikiki Road to Kaplania Park, to do and perform all the duties set forth and described in the laws of Hawaii, which are applicable to said office, and subject to removal as by the law prescribed.

"In witness whereof, I have hereunto set my hand and the seal of the Department of Public Works this 15th day of October 1902.

(Seal) HENRY E. COOPER,
Superintendent of Public Works.

Upon the meeting of the commission Judge Stanley raised the point of the validity of the appointment of the commission. He said that he was perfectly satisfied with the men on the commission, and he had no objections to Henry E. Cooper as Superintendent of Public Works. But he claimed that there could be but one Superintendent of Public Works at a time under the territorial act, and as James H. Boyd had been appointed, confirmed and qualified, he must be the Superintendent and the only superintendent until he was removed by death, resignation, expiration of term or otherwise. There had been no public notification that Boyd had been removed or that he had resigned or that Henry E. Cooper had been appointed in his place.

Judge Stanley based his objection on two points, first and principally, that James H. Boyd is still Superintendent of Public Works, and therefore this commission not being appointed by him is not legally constituted; and second, that whether Boyd is superintendent or not, in fact, there has been no public announcement by authority that he is not still superintendent, or that Henry E. Cooper is.

Mr. Cooper appearing for the government said he thought there could be no question of the sufficiency of the appointment of the commission, or the conclusiveness of its findings. While it was true that James H. Boyd had been appointed, confirmed and qualified, the governor, the power and authority given in the territorial act, had ap-

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Normal Coal Prices Will Soon Return

WILKESBARRE, Pa., Oct. 16. —The superintendent of one of the largest coal companies in the region was asked today how long it would take after the miners returned to work to bring about normal coal prices, and in reply he said: "It is the general understanding among the companies that only normal prices shall prevail after there is a general resumption of mining. All through the strike the companies, with the exception of a few individual operators, have not charged abnormal prices. The middlemen or retail dealers have taken advantage of the situation and put up the prices. It is possible they will keep them up until the public is fully supplied, and the demand is not greater than the production. It is not definitely known here how long it will take the companies to make the supply equal to the demand."

EXTRA SESSION MEN ARE VERY HOPEFUL

GOVERNOR DOLE MAY BE FORCED TO CALL THE SENATE TOGETHER—BOYD AND AUSTIN.

The case of Superintendent Boyd will be settled in a day or two, as far as the Governor can settle it. On Saturday Boyd was furnished with a written statement of the matters regarding which explanations are asked of him. Governor Dole sent him a communication, in which the matters which were the cause of Boyd's suspension were set forth, and a reply is now expected from Boyd.

The Superintendent of Public Works was at his office again this morning. Secretary Cooper remains in charge of the department, and is carrying on much work. One report has it that in the event of Boyd not taking hold in the secretariat and take hold of the Department of Public Works permanently.

Some of the politicians who for nearly two years have longed for an extra session of the legislature see a chance for partial realization of their dream. If the courts do not sustain Governor Dole in the suspension of Auditor Austin, the executive will face two alternatives—allowing Austin to continue in charge of the most important office, as far as finances are concerned, in the territorial government, or calling the Senate together to assist in removing him. The powers of the Auditor are far-reaching all over the Territory, and the situation would be very strained if the courts should reinstate Austin.

The same situation may develop as to Boyd. In the event that the Governor decides that he ought not to return to his office, there is nothing in the statutes, say lawyers who have looked the matter up, to give the Governor power to remove a Territorial official without the consent of the Senate. The question of suspension is one which the attorneys differ and it will be argued at length before Judge Gear next Thursday.

The decision of the case to come before Gear, that of Austin against Dole, will have a controlling influence in the Boyd case, for it will establish a ruling as to the powers of the Governor. Here is where the extra session men are interested. They think that if the Auditor's contentions are sustained, Governor Dole will regard it as necessary to call the Senate in special session. Section 45 of the Organic Act says: "The Governor may convene the legislature, or the Senate alone, in special session." It is therefore regarded as possible that the execution would at once call the Senate together if he found it necessary, to get rid of officials whom he may decide should be removed.

An extra session of the Senate alone would not be a costly proposition. It is stated, and the senators would not be able, without the House, to keep up a long and expensive session such as would result if both houses were called.

MANOA WATER CASE SETTLED

JUDGE ROBINSON DECIDES A LONG-STANDING CASE—DECISION IN THE METCALF CASE.

In the case of Lum Ah Lee et al vs. Ah Soong et al, which was tried before Judge Robinson and has been going back and forth between the courts ever since, Judge Robinson handed down a decision making an award of damages in accordance with the decision of the Supreme Court. The defendants are found to have damaged the plaintiff in the sum of \$1,700, by interfering with their water rights in Manoa valley, during the drought of 1900. Judge Robinson in his decision says:

"It appears further from the evidence that at and during the existence and continuance of the unlawful acts of the respondents, in the latter part of the month of March, 1900, and for some time prior thereto, there existed in Manoa valley the most serious drought that has ever occurred in that locality. At least two witnesses, taro planters in the immediate vicinity, testified that they lost at least one-fourth of their entire crop of taro as a result of the natural drought. Lum Ah Lee, one of the complainants, testified that the forty-nine patches of taro planted in which was totally lost, damaged and destroyed by reason of lack of water, comprised an area of about nine acres; that the taro in twenty of said patches, constituting about one-half of the entire area comprising said forty-nine patches, was ready for pulling at the time of its destruction; that the taro in one-fourth of said entire area was from eight to ten months old; that the taro in one or two small patches was from one to two months old, and the balance, not quite half an acre, was from six to eight months old. He also testified that taro was ready for pulling in that locality about thirteen months from planting, although it required sixteen months from planting to reach full maturity."

In addition to the award of \$1,700 damages, Judge Robinson ordered a decree restraining the defendants from interfering with the water in the ditch known as Paaluh dam "every night from 6 p. m. to 6 a. m., and further on Mondays, Fridays and Saturdays, from 12 o'clock noon to 6 p. m." in accordance with their water rights as established by the decision of the Supreme Court.

The case of Frank Godfrey, as trustee for Thomas Metcalf, against Mrs. Emma M. Nakulua, was decided this morning by Judge Robinson in favor of the plaintiff. The suit was in equity, involving the title to Metcalf's residence in Manoa valley, and Judge Robinson orders Mrs. Nakulua to turn the place over to the plaintiff, with damages of \$1 on account of her unlawful occupancy.

The main contentions in the trial were as to the legitimacy of Thomas Metcalf, son of Frank Metcalf. The will of Theophilus Metcalf provided that his son Frank should have a life estate in the property, and that it should go to Frank's sons after that. Judge Robinson discussed the evidence as to the birth of Thomas Metcalf at considerable length, and said:

"I am satisfied from the evidence adduced that Thomas Metcalf, plaintiff's beneficiary, is the sole surviving lawfully begotten child of Frank Metcalf, and as such sole surviving lawfully begotten child, was entitled upon the death of his father, the said Frank Metcalf, to the immediate possession of the lands and premises described in plaintiff's complaint, being at that time the owner in fee thereof, and that the plaintiff, as trustee for said Thomas Metcalf, under and by virtue of said deed, dated August 20th, 1901, ever since said last mentioned day has been at the time of the commencement of this action was, and is now the owner and entitled to the possession of said lands and premises. The presumption of legitimacy of a child born during the continuance of a valid marriage is too strong to be overcome by the evidence adduced on behalf of the defendant in the case at bar."

PRIZE FIGHTER IN TROUBLE.

H. Bennett who appeared at a recent boxing contest here, is in trouble at the police station. He is charged with having been the cause of the shooting on Richard street last night, when seven natives press them and a man named Bennett, who had been in the Hawaiian hotel, Bennett is suspected of having been on the premises of the hotel without lawful warrant or excuse.

HURRICANE PROOF.

James S. McCandless says that most of the native houses in Porto Rico are made out of the leaves of the Royal Palm. As the leaves fall from the tree the natives press them and use them. By this process they become like wide boards and are used as such in building their huts. These huts, he says, are seldom destroyed by hurricanes, as the hurricanes come only once in about 25 years and the huts don't last nearly that long.

A WORD TO TRAVELERS.

The excitement incident to traveling and change of food and water often brings on diarrhoea, and for this reason no one should leave home without a bottle of Chamberlain's Colic, Cholera and Diarrhoea Remedy. For sale by all dealers, Benson Smith & Co., general agents.

MILLINERY.

In our millinery department we have a choice assortment of the newest novelties. An up-to-date hat trimmed to order costs just half of what it would elsewhere. L. H. Kerr & Co., Queen street.

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TANBARA'S STORY OF MASTER'S DEATH

HOW DEATH OF CAPTAIN JACOBSEN OCCURRED ACCORDING TO TESTIMONY OF GUILTY MAN.

The part of the Japanese Colony which has taken an interest in the trial of Tanbara Giasuro for the murder of Captain Jacobsen, feels quite strongly that the story of Tanbara himself, as told to the jury, is not true, except in the argument of counsel. A very large number of the most prominent and influential Japanese in the community have taken interest in the trial, and some of them have been in attendance nearly every day. Some of these have been heard to say that while not speaking it so readily understood it thoroughly. The interest they have felt has not been due to any other feeling, they say than that they wanted Tanbara to have a fair trial and the advantage of every right the law gives as to the jury.

Tanbara's story as some of these Japanese who attended the trial and heard it was this. Tanbara's understanding when he was hired as cabin boy was that he and the cook were to get \$60 a month between them, and that of this the cook was to get \$45 and he \$15. When they came to sign for their wages, however, the division made by the captain was \$42 for the cook and \$18 for the boy, the captain assigning as a reason that the boy was a good one. From this time on the cook was constant in his expressions of dissatisfaction and his enmity toward the captain. He kept repeating that he would desert as soon as they got to China. He also displayed a revolver in connection with his expressions of dissatisfaction with the captain.

On the morning of the death of the captain, Tanbara had taken the early morning coffee to the captain and had gone back to his bunk when the captain came into the cook's galley where the cook was at work, and asked where the boy was. The cook replied that he was in his bunk, and the captain asked the cook to go and get him. Tanbara being called got up and seated himself on an orange box. The captain asked the cook if he could make a sweet soup, to which the cook replied that he could if the captain would give him a cook book. The captain asked the cook to go and get it, and the cook went to the storeroom and brought back a book. Tanbara then came forward and asked the cook where the necessary materials, which he mentioned, were. The cook in reply opened the various containers in which they were. The captain noticed that the apples were only half eaten, and he brought from the storeroom and angrily told the cook that he had given orders that nothing was to be taken from the storeroom, except on his order. On this a quarrel ensued between the cook and the captain and the cook seizing the knife began slashing at the captain, one of the first strokes cutting the captain on the side of the face.

As soon as this fight began Tanbara says he jumped up and seizing the cook's arm wrested the knife from him, though the cook kept on fighting. The captain then called out: "Boy, give me that knife," as the sailor Mota was titled to hearing. But Tanbara claims that he did not give the knife to the captain as the latter was excited and angry, and he feared he might either kill the cook with it, or kill Tanbara himself. The noise made by the sailors who had heard the quarrel and the struggle and the captain's words was heard in the galley at this time, and Ota, the cook immediately escaped from the galley. The captain continued his efforts to get the knife from the boy, following him up as the boy retreated back into the storeroom to the doorway engine room. The boy claims that he tripped up on an obstacle here and fell on his back with the knife firmly grasped in his hand in his efforts to keep the captain from wresting it from him. As he fell backwards, the captain still clutching the knife, fell also, on his back, and Tanbara says he saw the injuries that caused his death as he fell. But in the excitement of the time Tanbara says he did not know the captain was dead but that his mind was still occupied with the thought that he must keep him from getting the knife. As soon as the second mate, Governor and tried to take the knife away from him he still clung to it under the impression that it was the captain still seeking to wrest the knife from him, until looking up, he saw the mate's face when he instantly released his grasp on the knife.

Such is the boy's story on the witness stand, according to a number of Japanese who were present and heard it and understood it in Japanese.

THE FEDERAL JURY.

United States Judge Esteé this morning excused all the jurors summoned on special venire for the Tanbara case, leaving only 20 jurors of the original panel to try the cases still on his calendar. Tomorrow the court will take up the cases of the United States vs. H. Hackfeld & Company, in which the defendant corporation is charged with importing Japanese laborers under contract.

STRAIGHT TIP.

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Rice & Perkins, Union and Hotel streets, do kodak film developing and printing.

LOOKS TO JAPAN FOR AID

The Through Passengers On Miowera

Among the passengers by the Miowera from Sydney, Brisbane and Suva were C. and K. Gochen, nephews of the British statesman of that name. From Vancouver they expect to go to San Francisco, and from thence to the Orient and then by way of India to England.

Captain Tremayne is an Australian who went with the colonial troops to the Boer War and won his captain's commission there. He is on a pleasure trip now to British Columbia.

Mr. Berbelly, another passenger by the Miowera is a prominent barrister of Suva.

Rev. Anderson is an evangelist who has been in the colonies for some time and now goes to join Dr. Torrey in the Orient. Dr. Torrey, it will be remembered, was long connected with the Moody Institute in Chicago and passed through here some months ago.

LEGAL STATUS OF LEGLESS MAN

IF ILLEGALLY ADMITTED TO THE COUNTRY BY THE AUTHORITIES HE CAN BE DEPORTED.

The charge of vagrancy against Evangelista Mantalvo, the legless Porto Rican, who arrived last Wednesday on the Sierra from San Francisco, was continued a week by Judge Wilcox this morning. The defendant is a pauper and will be a charge on the community. It is hoped that some means can be secured to care for him without incarcerating him in the prison.

Evangelista Mantalvo, the legless Porto Rican, may step into history as the man who solved the relationship between Hawaii and the rest of the sisterhood of states and territories. Mantalvo seems already to have become a charge on the community, although he has been only about a week in the territory.

Some question has arisen as to how he, an alien pauper, was admitted into the United States through this port. But as he came from another port of the United States here, it is said there could be no question raised by the official here as to his right to be in the United States or to land in this port.

It is said that he was landed from Cuba in New York. In that case if he was illegally landed it is the fault or mistake of the immigration authorities there. But being admitted into the country, the immigration authorities at other places cannot question the decision of the authorities that admitted him. It is stated however that an inquiry directed to the Treasury Department setting forth his present status, might bring about an inquiry as to whether or not he was illegally admitted into the country, and if he was, may secure his deportation.

But moreover it is stated that even if he was legally admitted into the country and has become a pauper or public charge since, it does not follow that Hawaii will have to bear the burden of his support. There is law whereby one state or territory is prohibited from dumping its paupers and dependents on another state or territory, and if, after he became a pauper he was sent here, either directly or indirectly, it is said the transportation companies that brought him can be required to take him back.

What is required to set the machinery in motion is said to be a representation from the proper authorities here to the proper authorities elsewhere.

At the time Mantalvo came here there was a story published to the effect that he had landed in the United States with \$2000 but had been robbed of before getting here.

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Safeguards the food against alkali.

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TANBARA BELIEVES HE WILL NOT HANG

THINKS IMPERIAL GOVERNMENT WILL SEND WARSHIP TO EFFECT HIS RELEASE—CASES OF OTHER MURDERERS.

There are three Japanese in Oahu jail now, under conviction for murder and waiting to be hanged, in addition to others who are in danger of the gallows, and a movement has been started among the Japanese in Honolulu to raise funds to fight their cases for them. It appears to be largely a matter of race feeling with them, and Tanbara Giasuro, who arrived here friendless and penniless and has been found guilty of murder, is being given the benefit of it as well as the others.

Tanbara has an idea that the Japanese Government will interfere in his behalf. This probably accounts in some degree for his indifference. During the trial he showed little concern and when told that the jury had brought in a verdict condemning him to death, he did not seem much disturbed. Tanbara has stated that the imperial government would send a war vessel to Honolulu harbor and force the authorities to release him. He has full confidence in the power of the Japanese Government to do this, and thinks that the Emperor will not allow him to be hanged by the American authorities.

The other two Japs who have been sentenced to be hanged are Yasuhiro Denjro and Minura. The former was found guilty of a most brutal murder on Kauai, at the last term of the Fifth Circuit Court. He shot his foster father, whom he had recently brought to the country from Japan. The move for the crime did not appear. Denjro called at the home of his victim and after wounding him he stepped up to him and fired five shots into his body as he lay helpless on the ground. The jury found him guilty in less than ten minutes, and Judge Hild sent him to be hanged. The time is to be fixed by the High Sheriff.

Minura came from Wailua. He cut the throat of a woman with whom he had been keeping company, and then attempted to commit suicide. He severely cut himself, but recovered at the hospital, and was sentenced to hang by Judge Gear. His attorneys, T. L. Dillon and H. W. Robinson, are considering an appeal.

A fourth prisoner under the death sentence is George Ferris, a white man, who stabbed John Watson fatally in a quarrel in Kakaia. An appeal has been noted in his case. His attorneys are E. C. Peters and C. F. Reynolds. The latter has left for the mainland and if he does not return Peters will conduct the appeal.

In all of the Japanese cases the defendants were penniless, but as soon as the gallows loomed before them, countrymen became interested. Tanbara is the one whose case will take the most money, for an appeal from the United States Court is an expensive proceeding. It is stated by Japanese, however, that the money will be forthcoming. An appeal has been noted, and Attorney Thompson has a record full of legal exceptions, on which he may take the case to the Ninth Circuit Court of Appeals at San Francisco and then to Washington.

Tanbara's trial was an expensive one to the United States Government. After the verdict yesterday eight sailors, held as witnesses were released from Oahu jail, and their fees amounted to \$81 each, or \$648 in all. They were seamen of the schooner Wood and have been confined ever since they arrived here with the dead body of her captain on board. They were glad to get freedom, as well as the \$81 each.

Two witnesses were brought from San Francisco, Mrs. Jacobson and Sec-

(Continued on page five.)



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